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MEMORANDUM FOR:

SUBJECT : S.2525

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REFERENCE :  Memo and Attachment

1. This memorandum contains my views on a few of the key items of the new legislation. I have keyed them to the pertinent paragraphs in the attached referent memorandum.

2. Re item 21, the Agency had proposed the following as an addition to Section 441(d)(1):

"The Agency may, under such regulations as the Director may prescribe, provide housing to employees in foreign areas, or pay allowance in lieu thereof, including the rental, purchase, sale, exchange or other disposition of residential property; provided, that the proceeds of the sale or disposition of any such property may be used only for the purchase of other property;"

This language was omitted in S.2525, and I recommend that the Agency take the position that it must be included. All agencies with personnel overseas have the authority to provide housing, and we particularly need the flexibility to provide housing

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25X1 it is necessary that the officer identified be moved to other premises. If the house is owned we cannot simply abandon it, and if it is assigned to another government employee the new occupant is thereby placed in danger. In such situations the only sensible approach is to sell the property and buy something else with the proceeds. However, whether the reinvestment authority is included or not, it is vital that we include specific authority to acquire housing. Again, the committee included this general authority for NSA in Section 621(a)6, page 238, and I do not see why they would object to providing us the same authority. You might examine Section 421(a)(5) to determine whether residential property could be covered under this provision. In the absence of specific authority, our present policy in [redacted] could be challenged. We cannot afford to rely entirely on the Title V authorities because that legislation is managed within the Department of State. Exceptions and adjustments are easily obtained inside the Department, but the published regulations make no provision for exceptions to be approved except under delegation from State. The position I have taken applies only to residential property, not all property as suggested in item 21. We and State already have the authority, for example, to apply the proceeds of the sale of cars to replacement. Except for residential property, I defer to the Office of Logistics and Finance. I doubt that we could get authority as broad as you suggest in note b to item 21, but there is a precedent for such authority in housing.

3. Re item 44. In our earlier correspondence with the Committee we proposed the addition of the following:

"Notwithstanding the provisions of subsections (b) and (c) of this section, and under regulations approved by the Director, the Agency may pay benefits in lieu of those specifically authorized, or may grant special quarters, cost-of-living and representation allowances and travel expenses when it is determined by the Agency that such are necessary for reasons of operational necessity or security."

S.2525 does not include this language, and Mr. Raffel's letter of February 21 indicates that the omission was intentional. I strongly recommend that the Agency take the position that this language, or something similar, must be included. However, I think Raffel's point is well taken with respect to the "operational necessity or security" proviso. I think we should delete this and substitute "when necessary to accomplish the mission of the Agency." In many cases operational necessity and security

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may not be a consideration. This is, in effect, a matter of managerial flexibility which any agency head should have, and it is not unique to us. The Department of State has similar authority (Section .013, Standardized Regulations, Government Civilians, Foreign Areas), and they use it frequently. In fact, the Secretary of State can redelegate the authority to other agencies. Further, the Committee has included comparable language for NSA in Title VI Section 625(b)(1) of the Act. We frequently are required to pay special allowances and it is essential that we retain the authority to do so. It is my understanding that the language contained in Section 425(a) is not broad enough to cover this type of expenditure. The language actually contained in Section 441(d)(1) does not authorize the payment of different allowances, but only the use of alternate channels of paying the Standardized allowances. Our entire nonofficial cover program is based on our authority to pay allowances above the standardized rates when necessary, and in some cases we must authorize increased payments for other than nonofficial activities. For example, we may require an employee

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25X1 [redacted] we should emphasize that the authority we are requesting in this specific case does not go beyond the authority the Secretary of State has for the management of the Foreign Service, or that of the Secretary of Defense for the military services.

4. Re item 31. In earlier correspondence we recommended to the Committee that language be added to Sec. b(25)(a) which would state:

"...funds can be expended to carry out the functions authorized by this act and for activities of an extraordinary or emergency nature, not otherwise authorized by this act, when such expenditures are approved in advance by the Director of National Intelligence pursuant to the authority in Section ....of this Act"...

However, the language actually included in the legislation states that "sums made available to the Agency by appropriations or otherwise may be expended for purposes necessary to carry out the lawful functions of the Agency." On the basis of our conversations, it would appear that the language in S.2525 is in fact far more restrictive than it might appear to be. I recommend that our position be that the Agency must have authority equivalent to that which now exists in Section 8b and that the language proposed earlier or that included in note a, page 8 of the referent memorandum, be used. A few months ago OGC compiled, for the House Appropriations Committee, a listing of the more significant Section 8b expenditures over the past two years. In addition, I

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have attached lists of other types of payments which must be continued. Other actions which we now handle under various authorities, and which we must consider, are the various activities approved by the DCI and the DDA under [redacted] as well as the Agency's housing policies described in [redacted]. We should note that, here again, the Committee has included for NSA the type of authority we had requested for CIA. (See Section 625 (b)(1), page 247.) The authority for the Director NSA to expend funds for confidential, emergency, or extraordinary expenses requires only the approval of the Secretary of Defense and an allocation of funds from him. The general delegation to the Director of National Intelligence in Title I, Section 122(b) and similar language in Section 425(b) Title IV applies only to accounting procedures, not expenditure authority. It is essential that some type of Section 8b authority be retained, although it could be incorporated in some section other than those previously considered. We should also continue to distinguish between this authority, which is based on operational, cover or security factors, and the authority discussed in paragraph 3 which is based on the requirement for management flexibility which any head of agency must have. Both are needed, but if you could combine them there would be no objection. The Office of Finance has noted that we should be careful not to regard the NSA authority in Section 625(b)(1) as a complete model, since a separate appropriation for this is provided for the Secretary of Defense and we would not want to be placed in the position of asking for separate appropriations.

5. Re item 43. I agree that the 60 day waiting period is unreasonable, particularly when one realizes that it is added to the period of time it will take to work an Executive Order through the system. This could mean that other agencies will have a benefit for five or six months before we are able to apply it to our employees. I do not see why concurrent notification to the Congress would not suffice, and the action could be rescinded if it is inappropriate.

6. Re item 42. I have no objection to the language in note b if OGC says that this will meet our requirements.

7. Re item 41. No objection to a or b. I also have no objection to the language in item 16, and it could be very helpful. I agree with your comment in item 17.

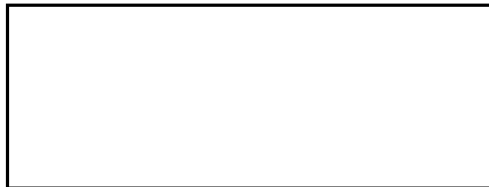
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8. Could you please affirm that S.2525, as presently written, contains the authority for us to adopt the educational travel entitlements of the Foreign Service.



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